

REMARKS

A. BACKGROUND

The present Amendment is in response to the Office Action mailed October 1, 2008. Claims 1, 4, 7, 9-12, 16, 26-32, and 35-40 were pending, claims 1, 4, 7, 9-12 and 15 were previously withdrawn, and claims 26-32 and 35-40 were rejected in view of cited art.¹ Claims 1, 4, 7, 9-12, 15, and 28 are cancelled, claims 26 and 35 are amended, and new claims 41-46 are added. Claims 26, 27, 29-32, and 35-46 are now presented in view of the above amendments.²

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicant requests that the Examiner carefully review any references discussed below to ensure that Applicant's understanding and discussion of the references, if any, is consistent with the Examiner's understanding.

B. PRIOR ART REJECTIONS

I. REJECTIONS UNDER 35 U.S.C. §102(E) AND UNDER 35 U.S.C. § 103

The Office Action rejected claims 26, 28-30, 32, and 35-39 under 35 U.S.C. § 102(e) as being anticipated by U.S. Publication No. 2002-0177800 (*Bagaoisan*). The Office Action rejected claims 27, 31, and 40 under 35 U.S.C. § 103(a) as being unpatentable over *Bagaoisan*. Because *Bagaoisan* does not disclose, teach or suggest each and every element of the rejected claims, Applicant respectfully traverses this rejection in view of the following remarks.

Applicant respectfully notes that a claim is anticipated under 35 U.S.C. § 102(a), (b), or (e) only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Further, the identical invention must be shown in as

¹ Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should the need arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

complete detail as is contained in the claim. Finally, unless a reference discloses within the four corners of the document not only all of the limitations claimed but also all of the limitations arranged or combined in the same way as recited in the claim, it cannot be said to prove prior invention of the thing claimed and, thus, cannot anticipate under 35 U.S.C. § 102. Manual of Patent Examining Procedure ("MPEP") § 2131, Net Moneyin, Inc., v. Verisign, Inc. and Eprocessing Network, 2007-1565, Fed. Cir. (2008).

Bagaoisan teaches aspiration catheters and method of use (Title). An occlusion balloon guidewire catheter of *Bagaoisan* includes "an elongated flexible tubular body 44 extending between a proximal control end 46 . . . and a distal section of tubular body 44" (Paragraph 0060). The tubular body includes a central lumen, with "[a]n inflation port 52 . . . in fluid communication with lumen 50" to allow fluid to pass from "the inflation port 52 into or out of the lumen 50 to . . . inflate or deflate an inflatable balloon in communication with the lumen 50" *Id.* "A valve 24 . . . is inserted into the proximal end 46 of the tubular body 44 to control inflation of the balloon 12" (Paragraph 0061). With the valve in place, "the adapter 20 [used to inflate the balloon] can be removed from the proximal end of the guidewire 14 while the balloon 12 remains inflated. With the proximal end of the guidewire 14 free of obstructions, *other catheters can be delivered and exchanged over the guidewire 14 . . .*" (Paragraph 0053)(emphasis added).

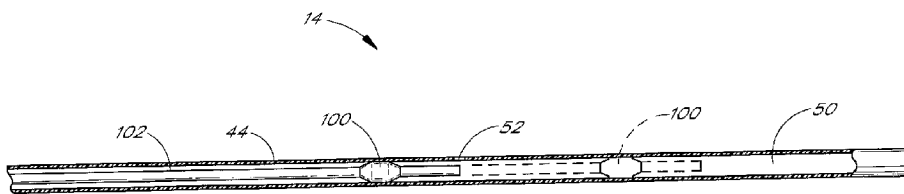


FIG. 4B

"[T]he low profile catheter valve 24 comprises a movable sealer portion 100 attached at a distal end of a wire segment 102 and positioned within the inflation lumen 50 of the guidewire catheter 14" (Paragraph 0074). "The sealer portion 100 forms a fluid tight seal with the lumen 50 . . . The sealer portion 100 may be positioned proximally of the side-access inflation port 52 on the catheter 14 as shown in FIG. 4B, to establish an unrestricted fluid pathway between the

² Support for the claim amendments and/or new claim(s) can be found in the specification and drawings as originally filed.

inflation port 52 and the inflatable balloon 12" (*Id.*). "The valve 24 is *considered 'low profile' because it is no larger in cross-sectional diameter than the catheter 14 itself*" (*Id.*) (Emphasis added).

"The occlusion system described above [i.e., the occlusion balloon guidewire catheter and valve] . . . enables exchange of catheters over a guidewire 14. . . . For example, a therapy catheter can be delivered over the guidewire 14 to perform treatment, and then be exchanged with an aspiration catheter," such as aspiration catheter 200 having an aspiration port 204 (Paragraphs 0078 and 0079).

Independent claim 26 recites, in part, "a fitting secured to the proximal end, the fitting includes a passageway in fluid communication with the catheter shaft," while independent claim 35 recites, in part "a fitting including a passageway; a catheter shaft including a distal end and proximal end being coupled to the fitting, which is in fluid communication with the catheter shaft." It appears that the Office Action refers to valve 24, adapter 202, aspiration port 204, etc. as the fitting. However, Applicant respectfully submits that the valve 24 neither teaches nor suggests the inclusion of a "passageway in fluid communication with the catheter shaft." In fact, inclusion of a passageway in valve 24 would make the valve unsatisfactory for its intended purpose of sealing the lumen of the occlusion balloon guidewire catheter because there would be a "passageway in fluid communication." (*see* MPEP 2143.01) Even if, *arguendo*, the valve were modified to include a passageway, this modification would change the principle of operation of the valve (*see* MPEP 2143.01).

Another fitting identified in the Office Action for having such a "passageway" is aspiration port 204 of the aspiration catheter 200. The aspiration port 204 is illustrated as being larger in cross-sectional diameter than the remainder of the aspiration catheter 200. Adding the port 204 to the guidewire would render the guidewire unsatisfactory for its intended purpose because the port 204 would appear to prohibit "*other catheters . . . [to] be delivered and exchanged over the guidewire 14 . . .*" (Paragraph 0053)(emphasis added). The Office Action has not cited, nor has applicant found any portion of *Bagaoisan* that leads to suggest the limitations claimed in independent claims 26 and 35 arranged or combined in the same way as recited in independent claims 26 and 35. Furthermore, Applicant has been unable to find any teaching or suggestion that the structures of the aspiration catheters are interchangeable with those of the guidewire.

With respect to new independent claim 41, *Bagaoisan* teaches away from the invention claimed in independent claim 41. Specifically, *Bagaoisan* teaches that "[t]he valve 24 is considered 'low profile' because it is no larger in cross-sectional diameter than the catheter 14 itself" (Paragraph 0074)(Emphasis added). In direct contrast, independent claim 41 recites, in part, "a fitting secured to the proximal end and having a second cross-section diameter greater than the first cross-sectional diameter." This element is opposite to the teaching of *Bagaoisan*.

Since *Bagaoisan* does not teach or suggest the catheter claimed in independent claims 26, 35, and 41, or the associated dependent claims 27, 29-32, 36-40, and 42-26, Applicant respectfully requests that the rejections under Sections 102 and 103 be withdrawn.

C. CONCLUSION

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as provide the required motivation or suggestion to combine references with the other art of record.

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For at least the foregoing reasons, Applicant respectfully submits that the pending claims are neither anticipated by nor made obvious by the art of record. In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 1st day of April, 2009.

Respectfully submitted,

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